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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
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| 09/248,057 | 02/10/99 | BUI T | 62492 |

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EXAMINER

THISSELL, J

ART UNIT PAPER NUMBER

3763

9 15

DATE MAILED: 08/15/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Applicant(s)

09/248,057

BUI ET AL.

Examiner

Jeremy Thissell

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5/21/01.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,8-13,18-21,24 and 26-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,8-13,18-21,24 and 26-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 10 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

Claim 10 is objected to because of the following informalities: the acronym "LCD" should be written out completely as "liquid crystal display (LCD)" once before the abbreviation is used in the claims. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1, 8, 9, 11, 12, 18-21, 24, 26, 30, and 33-36 rejected under 35 U.S.C. 102(e) as being anticipated by Wallace et al (US 6,024,089).

Wallace teaches all the claimed subject matter including a device that selectively displays controller buttons on a touch screen display according to status of the medical device. Wallace also teaches that the controller is remote from the medical device and teaches that the controller has memory, status indicators, and a display (see figure 2; col. 2, lines 66-67; col. 3, lines 31-46; col. 5, line 64-col. 6, line 13; and col. 9, line 63-col. 10, line4).

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallace et al.

Wallace teaches all the claimed subject matter except for the display being an LCD and for the controller being a personal computer. Although Wallace does not explicitly state that the display can be an LCD, the examiner takes the position that LCD's are every bit as common as other displays such as CRT's (conventional computer monitors) and it would have been obvious to one of ordinary skill in the art to substitute one for the other.

Wallace teaches a substantial amount of computer componentry in col. 5, line 64-col. 6, line 12. In view of Wallace's use of so much equipment common to personal computers, one of ordinary skill in the art would have found it obvious that a personal computer would be suitable for use as the controller unit in Wallace.

Claims 3, 13, 27, 28, 31, and 32 rejected under 35 U.S.C. 103(a) as being unpatentable over Wallace in view of Lynch et al (US 5,885,245).

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Wallace teaches all the claimed subject matter except for the medical device being a liquid infusion pump, and the controller having different display settings in memory, which are used based on recognition of different medical devices.

Wallace teaches that the medical device controlled is a ventilator, which of course pumps gas (which is a fluid) into the body. Lynch teaches a similarly controlled device wherein the medical device infuses liquid into the body. Since both devices pump fluids into the body, the examiner takes the position that one of ordinary skill in the art would have found it obvious to use the controller device of Wallace with a liquid infusion pump as taught by Lynch in order to reap the benefits of the simplified display keys during use of a liquid infusion pump.

Lynch also teaches that the device has memory that stores display settings for different liquid infusion pumps (col. 9, lines 23-38). Again, since the devices are so similar in their function, the examiner takes the position that one of ordinary skill in the art would have found it obvious to incorporate the memory settings (as taught by Lynch) for multiple ventilators into the device of Wallace in order to make the controller more versatile and/or universal by making it compatible with many different kinds of ventilators.

Response to Arguments

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Although the examiner maintains that the previous rejections made using Lynch and the captured Windows menu are still valid, the new art cited by applicant in the IDS

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filed on 16 October 2000 (paper #10) is more closely related to the instant claims. Since it makes no sense to send the case to the Board of Appeals without the best art applied to the claims, the examiner has withdrawn finality and issued a new non-final rejection as per MPEP 609 B(3).


Conclusion

Finality is hereby withdrawn and this action is made NON-FINAL in view of new grounds of rejection.

Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy Thissell whose telephone number is (703) 305-5261. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Seidel can be reached on (703) 308-5115.

jt
August 13, 2001


ANH TUAN T. NGUYEN
PRIMARY EXAMINER
8/13/01

Attachment for PTO-948 (Rev. 03/01, or earlier)
6/18/01

The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

1. Correction of Informalities -- 37 CFR 1.85

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made, other than correction of informalities, unless the examiner has approved the proposed changes.

Timing of Corrections

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.